



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/982,554	10/18/2001	Mathias C. Zohoungbogbo	601-17c1	8007

7590 07/30/2002
SOFER & HAROUN, L.L.P.
Suite 1921
342 Madison Avenue
New York, NY 10173

EXAMINER

HUI, SAN MING R

ART UNIT	PAPER NUMBER
----------	--------------

1617

DATE MAILED: 07/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/982,554

Applicant(s)

ZOHOUNGBOGBO, MATHIAS C.

Examiner

San-ming Hui

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-25 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 09/333,097.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-3, 11, 14, and 17 (in part), 4, 6-8, 13, 16, and 18, drawn to composition comprising a hypocholesterolemic agent, hypotriglyceride agent, a lipasic agent, a hypoglycemic agent, a hydrocoleretic agent, a hypoureimic agent, a radical scvaneger, and a sympatholytic agent classified in class 424, subclass 400-483.
- II. Claims 1-3, 11, 14, and 17 (in part), 5, 9, 10, 12, 15, and 19, drawn to a composition comprising a hypocholesterolemic agent, hypotriglyceride agent, a lipasic agent, a hypoglycemic agent, a hydrocoleretic agent, a sedative agent, an anorectic agent, and a lipolytic agent, classified in class 424, subclass 400-483.
- III. Claims 20, 23 (in part), 21 and 24, drawn to a method of preventing or treating side-effects of ketogenic diet employing composition of claim 1 or that of claim 4, classified in class 514, subclass 13, 725, 458, 276, 474, 649, 280, and 348.
- IV. Claims 20, 23 (in part), 22, and 25, drawn to a method of preventing or treating side-effects of ketogenic diet employing composition of claim 1 or that of claim 5, classified in class 514, subclass 13, 221, 659, and 568.

The inventions are distinct, each from the other because of the following reasons:

Inventions I, II and III, IV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product as claimed can be used in a materially different process such as weight control.

Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions have different mode of operation. Composition of invention I contains different actives from that of invention II. Composition of invention I contains a hypocholesterolemic agent, hypotriglyceride agent, a lipasic agent, a hypoglycemic agent, a hydrocoleretic agent, a hypoureimic agent, a radical scvaneger, and a sympatholytic agent; while Composition of invention II contains a hypocholesterolemic agent, hypotriglyceride agent, a lipasic agent, a hypoglycemic agent, a hydrocoleretic agent, a sedative agent, an anorectic agent, and a lipolytic agent.

Inventions III and IV are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions have different modes of operation. The

invention of group III operates by employing the composition of invention I; while the invention of group IV operates by employing the composition of invention II.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Because the above restriction/election requirement is complex, a telephone call to applicant's agent to request an oral election was not made. See M.P.E.P. Sec. 812.01.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to San-ming Hui whose telephone number is (703) 305-1002. The examiner can normally be reached on Mon 9:00 to 1:00, Tu - Fri from 9:00 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Russell Travers, J.D., can be reached on (703) 308-4603. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 308-4556 for After Final communications.

Application/Control Number: 09/982,554
Art Unit: 1617

Page 5

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

San-ming Hui
July 27, 2002


RUSSELL TRAVERS
PRIMARY EXAMINER
GROUP 1200